

REMARKS

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The specification was objected to as failing to provide proper antecedent basis for the claimed subject matter. The Examiner believes that there was no support in the specification for the ball being removably mounted or the hand-gripping portion being generally V-shaped. First, there is nothing in the claims that states that the ball is removably mounted. The specification clearly supports the fact that the ball is movably mounted to the second end of the handle. The Examiner's attention is directed to page 3, lines 11-15, of the specification.

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With respect to the Examiner's objection that there is nothing in the specification that states that the hand-gripping portion is generally V-shaped, the Examiner is reminded that the original claims form a part of the specification. Thus, claim 11, by stating that the hand-gripping portion is generally V-shaped, is in itself support for claim 11.

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Claims 1, 3-4, 6, 8 and 11 were rejected under 35 U.S.C. § 102(b) as being anticipated by Haygood. The Examiner acknowledges that Haygood discloses a batting practice device but contends that the same anticipates a massage device as set forth in the claims. Although claim 1 is believed to have been allowable in its original form, claim 1 has been rewritten in combination form as claim 15 to positively describe the massage device. There is absolutely no teaching in Haygood that the batting practice device thereof could be a massage device as specifically required by claims 15 and 2-14.

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1           Claims 2 and 5 were rejected under 35 U.S.C. § 103(a) as being unpatentable  
over Haygood in view of Mitchell. The Examiner again relies on Haygood as  
disclosing a batting practice device that anticipates a massage device. As pointed out  
above, since claim 15 is now a combination claim and the massage device is positively  
5           claimed, Haygood cannot be construed as disclosing a massage device as required by  
claims 2 and 5. Further, the Haygood reference cannot be regarded as being in  
anticipation of the claimed invention under the doctrine of inherency.

10           Claims 7 and 9-10 were rejected under 35 U.S.C. § 103(a) as being  
unpatentable over Haygood in view of Rodriguez. Again, the Examiner states in his  
rejection of claims 7 and 9-10 that Haygood discloses a batting practice device that  
anticipates a massaging device. Again, claims 7 and 9-10 ultimately depend from  
combination claim 15 which positively recites the massage device. Accordingly, there  
is no teaching in Haygood that the device of Haygood could be a massage device.  
15           Accordingly, claims 7 and 9-10 should be allowable.

20           Claims 11-13 were rejected under 35 U.S.C. § 103(a) as being unpatentable  
over Haygood in view of Mitchell, along with Killion. Again, the Examiner relies on  
Haygood as the principal reference as disclosing a batting practice device that  
anticipates a massage device. For the reasons stated above, Haygood cannot be  
regarded as anticipating a massage device. Therefore, claims 11-13 should also be  
allowable.

25           The foregoing has clearly shown that all of the claims in the application are  
allowable over the references of record.

1           No fees or extensions of time are believed to be due in connection with this  
Amendment; however, please consider this a request for any extension inadvertently  
omitted and charge any additional fees to Deposit Account No. 502093.

5           Respectfully submitted,

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CERTIFICATE OF MAILING

15          I hereby certify that the original of this AMENDMENT for STEWART E. SLOAN,  
Serial No. 10/827,032, was mailed by first class mail, postage prepaid, to Mail Stop  
Amendment, Commissioner for Patents, Alexandria, VA 22313, on this 2nd day of  
June, 2005.

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